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CONSTITUTIONAL LAW—SERVING LIQUOR TO MINORS IN OWN HOME
NOT IN VIOLATION OF SECTION 484(3) OF PENAL LAW

Dorothy Martell had at various times over a period of six months allowed four friends of her fifteen year old daughter to meet at her home. Among the four friends were a fifteen year old girl, two sixteen year old boys and a seventeen year old boy. On some of these occasions she served her daughter's friends beer. On the day here involved the fifteen year old girl became "violently ill"¹ as a result of drinking beer at the Martell home. Dorothy Martell was convicted in the Dutchess County Court of one violation of New York Penal Law section 483(2) (endangering the health or morals of a child under sixteen years of age), and four violations of New York Penal Law section 484(3) (selling or giving liquor to a child under eighteen years of age).² She was given a fifteen day sentence for the conviction under section 483(2) which she had already served. For the four violations of section 484(3) the defendant was given a suspended sentence and placed on probation. On appeal by permission from the judgment for the People, *held*, affirmed in part³ [the conviction under section 483(2)], reversed in part [the four convictions under section 484(3)], all judges concurring. *People v. Martell*, 16 N.Y.2d 245, 212 N.E.2d 433, 264 N.Y.S.2d 913, (1965).

State liquor control laws, of which section 484(3) of the New York Penal Law is an example, limit a child's access to intoxicating liquors by imposing criminal liability upon those who serve such children intoxicating liquors.⁴ While these statutes are generally applied only to commercial transactions, several courts have interpreted them so as to encompass the situation involved in the instant case.⁵ The New York Court of Appeals, in the instant case, and the courts of several other states, have refused to impose criminal liability upon

1. Respondent's Brief, p. 5, *People v. Martell*, 16 N.Y.2d 245, 212 N.E.2d 433, 264 N.Y.S.2d 913 (1965).

2. N.Y. Pen. Law § 483(2) reads, "A person who . . . wilfully causes or permits such child [one actually or apparently under the age of sixteen] to be placed in such a situation . . . that its life or limb is endangered, or its health likely to be injured, or its morals likely to be impaired, . . . is guilty of a misdemeanor."

N.Y. Pen. Law § 484(3) reads, "A person who . . . sells or gives away, or causes or permits or procures to be sold or given away to any child actually or apparently under the age of eighteen years any alcoholic beverages as defined by the alcoholic beverage control law . . . is guilty of a misdemeanor."

3. The Court did not discuss this part of the conviction because the defendant was not questioning it. Instant case at 247, 212 N.E.2d at 433, 264 N.Y.S.2d at 914 (1965).

4. See, e.g., Pa. Stat. Ann. tit. 47, §§ 4-493(1)-494 (1952); N.J. Rev. Stat. § 33:1-77 (1959). See also, N.Y. Alco. Bev. Control Law § 65.

5. *State v. Hughes*, 3 Conn. Cir. 181, 209 A.2d 872 (1965); *State v. Mapes*, 248 Ia. 39, 79 N.W.2d 202 (1956); *State v. Davis*, 244 Ia. 400, 56 N.W.2d 881 (1953); *State v. Stock*, 169 Minn. 364, 211 N.W. 319 (1926); *State v. Sifford*, 51 N.M. 430, 187 P.2d 540 (1947).

In *Hughes*, *Mapes*, *Davis*, and *Sifford* the statutes specifically exempted parents and guardians from their scope. The New York statute involved in the instant case does not. If the Court of Appeals had reached the opposite conclusion, the prohibition against serving liquor to minors would have been absolute.

homeowners who served intoxicating beverages to children.⁶ Civil liability for serving liquor to children exists only under special circumstances. To the extent that they apply here, the Dram Shop Acts⁷ impose liability for damages, both actual and punitive, upon those who serve children liquor in commercial transactions for injury to person or property by the child. In those states which have parental liability statutes, the parents of intoxicated children might also be liable, for a limited amount, for "wilful and malicious" damage caused by their children.⁸

In the instant case the Court conceded that the language of the immediate paragraph of section 484 involved here, standing alone, would require conviction.⁹ But the Court relied on the legislative intent in refusing to so construe the statute. Several rules of statutory construction were applied in reaching this conclusion. First, that to achieve the sense of a statute one must read the whole of it.¹⁰ Second, that when the legislative intent is uncertain, the principle of *noscitur a sociis* is applicable, and the scope of doubtful words or phrases may be determined by reference to the scope of other words and phrases in the statute.¹¹ As applied here, the doctrine suggested that the statute's prohibitions were intended to extend only to certain resorts or businesses.¹² Finally, the Court of Appeals thought it significant that no similar convictions were found under section 484(3) of the New York Penal Law.¹³

In the instant case the Court applied the most widely accepted rules of interpretation in deciding the scope of section 484(3) of the Penal Law.¹⁴ A statute is passed as a whole and not in parts and consequently each part or section should be construed in connection with every other part and the intention of the whole controls the interpretation of the parts.¹⁵ Rules and maxims of interpretation exist only as aids to the judge in determining the meaning and scope of a statute.¹⁶ It would appear that the Court of Appeals properly applied

6. *People v. Bird*, 138 Mich. 31, 100 N.W. 1003 (1904); *Commonwealth v. Carey*, 151 Pa. 368, 25 Atl. 140 (1892).

7. See, e.g., N.Y. Civ. Rights Law § 16; Ill. Ann. Stat. ch. 43, § 135 (Smith-Hurd 1944); Mich. Stat. Ann. § 18.993 (1957). The statutes often differ in certain respects. New York requires an unlawful sale [N.Y. Alco. Bev. Control Law § 65], while Illinois does not. But the Illinois statute makes contributory negligence a bar to recovery, while in Michigan contributory negligence is not a defense. See Note, *The Illinois Dram Shop Act*, 51 Nw. U.L. Rev. 775 (1957); *McDaniel v. Crapo*, 326 Mich. 555, 40 N.W.2d 724 (1950). For an analysis of the New York statute see Note, *Liability under the New York Dram Shop Act*, 8 Syracuse L. Rev. 252 (1957).

8. About 25 states have such statutes. See Note, *Parental Liability Statutes*, 55 Mich. L. Rev. 1205 (1957). Governor Harriman vetoed such a statute for New York in 1956 in a message found in N.Y. Sess. Laws 1956 at 1712.

9. Instant case at 247, 212 N.E.2d at 433, 264 N.Y.S.2d at 914.

10. Instant case at 247, 212 N.E.2d at 434, 264 N.Y.S.2d at 914.

11. 2 Sutherland, *Statutory Construction*, § 4908, at 393 (3d ed. 1943).

12. Instant case at 247, 212 N.E.2d at 434, 264 N.Y.S.2d at 914.

13. Instant case at 248, 212 N.E.2d at 434, 264 N.Y.S.2d at 914. Although the District Attorney cited a case right on point, *People v. Arriaga*, 45 Misc. 2d 399, 257 N.Y.S.2d 66 (City Ct. 1965) the Court of Appeals chose to ignore it.

14. 2 Sutherland, *op. cit. supra* note 11, §§ 4501-4706, at 314-40.

15. *Id.* § 4704, at 338.

16. Frankfurter, *Some Reflections on the Reading of Statutes*, 47 Colum. L. Rev. 527, 544 (1947).

the rules of construction involved, and correctly interpreted the scope of section 484(3) of the Penal Law.

While the Court's opinion settled the question of a host's possible criminal liability for serving liquor to children in his home under section 484(3) of the Penal Law, it left several other questions unanswered. The defendant did not question her conviction under section 483(2) since she had already served that sentence. This leaves open the possibility of further convictions under this section for endangering the health or morals of a child under the age of sixteen. This is especially true in cases where the child becomes ill from, or involved in an accident or commits a breach of the peace while under the influence of intoxicating beverages served to him while he was a guest at someone's home.

The Revised Penal Law, to become effective September 1, 1967, was mentioned, but not construed by the Court in the instant case.¹⁷ Section 260.20, subdivision 4, of the Revised Penal Law imposes criminal liability upon anyone who "gives or sells or causes to be given or sold" any alcoholic beverage to a child under the age of eighteen. While the maxim *noscitur a sociis* might again be applicable here, because the other subdivisions deal with commercial transactions, the comments indicate a legislative intent to include situations where a host serves a child liquor in his home.¹⁸ The statute specifically exempts parents and guardians from its scope, and the comments indicate that this was done to avoid the ". . . possibility of prosecution of a parent who gives his own seventeen year old child a glass of beer. . . ." ¹⁹ Subdivision 4 of section 260.20 of the Revised Penal Law, as opposed to its counterpart, subdivision 4 in section 265.15 of the Proposed Penal Law of 1964, ". . . forbids giving it [alcoholic beverages] to a child. . ." ²⁰ It would appear that the intent of the drafters of the Revised Penal Law was to include situations like the one involved in the instant case within the prohibitions of section 260, and if this is so, then the rules of interpretation used in the instant case become inapplicable. These rules exist only to indicate the legislative intent where it is uncertain, and they may not be used to defeat the announced intent of the legislature.²¹

Section 483(2) of the Penal Law only applies where the child involved is under the age of sixteen, and it seems doubtful that this section will be used in an attempt to prosecute a host for serving intoxicants to a child, except perhaps for those instances in which the child becomes ill from the intoxicating beverage, or in some other way shows its effect. As far as the existing law is concerned, it will not be illegal to serve a child under the age of eighteen intoxicating beverages until the Revised Penal Law becomes effective in September, 1967. However, the decision in the instant case has led to a legislative reaction. On February 1, 1966, Assemblyman Arthur J. Kremer introduced a bill into the New York

17. Instant case at 248, 212 N.E.2d at 434, 264 N.Y.S.2d at 915.

18. N.Y. Revised Penal Law (eff. Sept. 1, 1967), Commission Comments to § 260.20, at 302.

19. *Ibid.*

20. *Ibid.*

21. 2 Sutherland, *op. cit. supra* note 11, § 4908 at 393.

State Legislature which would statutorily reverse the instant case. The proposed amendment to the Alcoholic Beverage Control Law would make it a misdemeanor to serve liquor to persons under the age of eighteen, without having first obtained the consent of the child's parents.²² If this proposed statute is passed in its present form, it would clearly settle the question raised in the instant case.

An absolute prohibition against serving liquor to children in one's home is unrealistic in light of today's social mores.²³ Furthermore, it conflicts with the desirability of acquainting children with the effects of intoxicating beverages.²⁴ A balance should be struck between the two competing policies involved here. Liquor control laws should allow for an opportunity for children to become acquainted with alcohol, while preventing abuses and excesses which could lead to a child's endangering his own life or safety, or that of others. Section 260.20 of the Revised Penal Law seeks to accomplish this by exempting parents and guardians from the scope of the statute. The proposed amendment to the Alcoholic Beverage Control Law now before the legislature would accomplish the same result by requiring the parent's prior consent.

GEORGE WALLACH

CRIMINAL PROCEDURE—NEW YORK CODE OF CRIMINAL PROCEDURE
SECTION 813-C ALLOWS ACCUSED TO CHALLENGE PERJURIOUS STATEMENTS IN
AN AFFIDAVIT UPON WHICH A SEARCH WARRANT WAS ISSUED TO CONTROVERT
THE WARRANT

During the course of an arrest for policy gambling, evidence had been seized pursuant to a search warrant issued on the affidavit of a policeman. Defendant moved to suppress the evidence, alleging that the warrant was defective because the statements in the affidavit on which the issuance of the warrant rested were untrue. The New York City criminal court granted defendant a hearing on his motion to controvert the search warrant and suppress the evidence seized. At the hearing the magistrate weighed the evidence presented by the affiant in his affidavit against evidence presented by the defendant and two others who testified on the defendant's behalf that the statements in the affidavit were untrue. Following the hearing the magistrate granted the defendant's motion to suppress on the grounds of a "sharp conflict of testimony creating a doubt which must be resolved for defendant."¹ The Appellate term

22. "An Act to Amend the Alcoholic Beverage Control Law," A. Int. 2702, Print 2760 (Feb. 1, 1966).

23. 59% of underage teenagers in New York drink, although most of it takes place in the home. 60 Newsweek 20 (Nov. 26, 1962).

24. Barclay, *Straight Thinking about Drinking*, N.Y. Times Mag., Dec. 17, 1961, p. 43. Teen-age drinking is so widespread and its effects considered so important, that a movement has begun to foster education about alcoholic beverages in the schools. Nat'l Education Ass'n Journal 50:53, Dec. 1961.

1. *People v. Alfinito*, N.Y. City Court Order Docket No. 1340 (N.Y. City Ct. 1964).